ands. In Banco. April Term, 1887.

W. C. PARKE AND JONA. AUSTIN, ASSIG-NEES OF THE ESTATE OF Y. ANIN, A BANKRUPT, VS. S. SELIG, RECEIVER OF THE ESTATE OF ANIN AND AHUNA.

1149 of the Civil Code.

Bickerton, J. J. Fornander, J., absent. The following are the statements in the special case:

appointed assignees of the estate of and duly entered under bond at said Y. Anin a bankrupt.

said assignees claim from said Selig dred and fifty-seven 50-100 dollars; as such receiver, the sum of \$2,905.65 that defendant would not allow said as the amount due to the said Anin cigars to be withdrawn from bond upon the settlement of the accounts without the payment of said duties of of the said receiver.

5. The said Selig submits the folsaid Selig was appointed administra-16th, 1886, and found among the assets of the estate, a note in the words and figures following to wit: Doll's. 1,213.35.

Honolule, July 15th, 1885. hundred and thirteen 35-100 dollars at Honolulu in silver coin. Y. ANIN. Due January 15, '86.

That enquiry shows that said note was given by Anin to his partner Ahuna for a balance due on settlement between them at its date, and was for moneys advanced by Ahuna to said partnership over and above his share. That upon coming into possession of said note, the administrator brought suit thereon in the Supreme

Court, April Term, 1886. That upon being appointed receiver of the partnership the case was dropped upon agreement with Anin that payment for said note should be taken out of any moneys found to be due to Anin upon settlement by the receiver of the partnership accounts.

That the settlement of the receiver ship has been delayed, awaiting the result of certain law suits against the receiver, viz:

Ahuna vs. Selig, receiver. Yeong Sai Kong vs. same.

That His Honor the Chief Justice instructed the said Selig to postpone the settlement of the estate of Ahuna. and the said receivership until the decision of said law suits.

That in consequence of the agreement above mentioned to take the amount of said note from any moneys coming to Anin from said partnership, the receiver did not consider it necessary to take any further steps in relation to said note, as he held funds as such receiver more than sufficient to pay the said note.

6. The said Parke and Austin submit as follows to wit: That as such assignees they are entitled to receive from said receiver the whole of said sum \$2,905.15 which is the balance due to the said Anin upon settlement of the accounts of said receiver.

That the note in question was due and payable on the 18th day of January 1886, at which time the said Anin was solvent, and that if the said note was not paid before the appointment of said administrator, he should have collected same from the said Auin, and was not justified in dropping the suit which he had commenced for that purpose.

That not being diligent in the collection of said note, the said receiver is estopped from deducting the amount thereof from the sum shown by his accounts to be due to Anin."

That there was no legal transfer of the title of said note from the estate of Ahuna to the receiver of Ahuna and Anin.

That if said note has not been paid, it is the property of Ahuna, deceased, and should be proved as a claim against the estate of Anin bankrupt. That the deduction of the amount of such note from the amount due to Anin would if allowed be unjust and prejudicial to the interest of the credi

tors of Anin. The opinion of the Honolulu Court, and a decree in conformity therewith is requested as to whether the said receiver may deduct the amount of the said promisory note from the said sum of \$2,905.65 or whether he shall pay over to the said assignees the

whole of the said amount. Respectfully submitted this 23d day of April 1887.

Jona Austin for assignees of the estate of Y. Anin; S. Selig, receiver of the estate of Anin and Ahuna and administrator of the estate of L. Ahuna.

By the Court; We are of opinion that the Administrator of the estate of Ahuna is entitled to retain the amount of the note, and that the services of Anin are entitled only to the balance.
May 7th, 1887.

Sapreme Court of the Hawaiian Lit- St. 437. ands--In Banco. April Term, 1887. HYMAN BROTHERS VS. JOHN M. KAPENA, Collector-General of Customs,

JUDD C. J., M'CULLY J., PRESION J., MICHELLY S. Opinion of the Court by Mattell V. J.

This case comes by appeal from the Police Court of Honolulu It is prosented to this Court on the following agreed statement of tacts, and the

question reserved: "The following facts are agreed upon: That plaintiff in the month of November, 1886, imported and duly entered under bond at the Custom House at the Port of Honolulu an

Supreme Court of the Hawaiian Isl- invoice of Manila eigars of the value of nine hundred and fifty-two dellars (\$952); that on the third day of December, 1886, plaintiffs withdrew from bond ten thousand of said eigars of the value of one hundred and nineteen dollars (\$119), and paid to Special case stated under Section defendant ten dollars per thousand; that in addition to said duty defend-Before Judd, C. J., McCully, Preston, ant exacted and plaintiffs paid under protest a further duty of 25 per cent. upon the value of said eigars amount ing to the sum of twenty-nine 75-100 1. The said Parke and Austin were dollars; That plaintiff also in the upon the 19th day of April 1887, duly month of January, 1887, imported For Financial Strength Read the Society's Annual Statement for the Year Custom House an invoice of Havana 2. The said Selig was upon the eigars of the value of six hundred 16th day of February 1886, duly ap- and thirty dollars (\$630); that on the pointed administrator of the estate of 24th day of said January, plaintiffs L. Ahuna who died January 7th, 1886. withdrew from bond said cigars and 3. The said Selig was upon the 29th | paid a duty of ten per cent. on the day of March 1886, duly appointed same; that in addition to said duty receiver of the estate of Ahuna and defendant exacted and plaintiffs paid Anin, co-partners, doing business on under protest a further duty of 25 the Island of Oahu, as rice planters. per cent. upon the value of said cigars 4. The said Parke and Austin as amounting to the sum of one hun-25 per cent.

"Plaintiffs claim that the law enlowing statements: That Ahuna died acted at the session of 1886 to wit: so on the 7th day of January 1886: That | much as relates to cigars, of section | as 2 of an Act approved October 15, tor of the estate of Ahuna, February 1886, entitled 'An Act amendatory of Section 2 of Chapter 28 of the Session Laws of 1878, relating to import du ties upon wines,' being Chapter 54 of said laws, is unconstitutional.

"It is agreed to request the Court Six months after date, I promise to to reserve the question of the constipay to the order of L. Ahuna, twelve | tutionality of said portion of said law. And that if said law is held good judgment shall be entered for the defendant with costs; and if said law is held void as far as relates to cigars judgment shall be entered for the plaintiffs for the sum of one hundred | 4154 15+ and eighty-seven 25-100 dollars (\$187.25) with costs."

The title of the Act concerning which the question of constitutionality is raised is "An Act amendatory of Section 2 of Chapter 28 of the Ses sion Laws of 1878, relating to import duties upon wines.

The title of the Act of 1878, which is referred to is "An Act to amend An Act entitled 'An act to increase the import duties upon certain goods, approved the 27th day of September, 1876." The "certain goods" upon CASH ASSETS JAN IST, 1884 : : - \$1,411,894.41 which the duties are "increased" by the Act are more than forty articles or classes of articles among them three classes of wines. The Act of 1886 imposes specific duties on eight classes of goods, including the three classes of wines.

Article 77 of the Constitution, rends: "To avoid improper influences which may result from intermixing in one and the same Act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." A like article is found in the constitutions of a majority of the States of the American Union, some of them using the term one subject and some one object. The purpose of this provision is first to prevent hodgeodge or log-rolling legislation; second to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and third to apprise the people of proposed matters of legisla tion. See Cooley's Const, Limita tions, page 143.

It is clear that the title in the present case is misleading and would frustrate the second and third objects above proposed. It is declared by this title that the law intended to be amended is one relating to import duties upon wines, and inferentially, read by its title, this matter is what matter is what start y is presented to the attention of the legislature. Without the words "relating to import duties upon wines" the title describes an Act amending a specified Act of 1878 whatever subjects may be included in it, but these words being added must be considered to restrict the scope of the Act and of the amendment. Says Cooley at page 149 of the work cited above: "The courts cannot enlarge the scope of the title; they are vested with no dispensing power; the constitution has made the title the conclusive in dex as to what shall have operation; it is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so."

The error in this title is not in its insufficiency. As an amendatory Act it might be considered sufficient if it only referred to an original Act hav ing a title properly describing the subject matter. See State v. Ran som 73 Mo. 78, referred to at page 153 of U. S. Digest New Series Vol. 13. In the case before us the title goes beyond such reference and wrongly describes the Act referred to and the matter amended.

The Act being broader than the title does not however render the Act unconstitutional as to the subject expressed in the title, when that is sep arable from matters which are extra

Cooley's Const. Lim. page 148. Re Metropolitan Gas Light Co. 85 N. Y. 526. Daohurst v. Allegheny City 95 Pa.

The Act is good as to the duties mentioned upon wines. It is unconstitutional in respect to the added duties on cigars and cheroots. The plaintiffs' contention being sustained we order judgment for them for the amount settled in the agreed state- New England Mutual Life Ins. Co.

ment. May 7, 1887. F. M. Hatch for plaintiffs. A. P. Peterson for defendant.

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